

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for)
a certificate of public good, pursuant to)
30 V.S.A. § 248, authorizing the construction)
of approximately 43 miles of new natural gas)
transmission pipeline in Chittenden and Addison)
Counties, approximately 5 miles of new)
distribution mainlines in Addison County,)
together with three new gate stations in Williston,)
New Haven and Middlebury, Vermont)
In Re: Second Remand)

**CONSERVATION LAW FOUNDATION’S RESPONSE TO VERMONT GAS SYSTEMS
MOTION TO ADMIT MEMORANDUM OF UNDERSTANDING WITH PUBLIC
SERVICE DEPARTMENT**

The Conservation Law Foundation (CLF) offers the following response to the request by Vermont Gas Systems (VGS) to admit the Memorandum of Understanding (MOU) with the Public Service Department (PSD or Department).

1. Request violates Board Rules

Conservation Law Foundation opposes admission of the MOU absent a specific motion, accompanied by a memorandum of law as required by PSB Rule 2.206.

A considerable amount of evidence presented during the hearings addressed the overall costs and benefits of the proposed project, including the impacts on rates, whether there would be rate recovery, and how the increased costs would be paid. VGS's position during the hearings was that the rate impact would be addressed later, and in future proceedings, but that all costs would be recovered in rates. (Tr. 9/26/15 at 27, 52 (Rendall)) The offer of the MOU seems to

suggest a change in position by VGS. VGS should explain the relevance of the information provided and how it affects the Board's evaluation. VGS should also identify why the information was not presented previously. If VGS had an understanding of a cost cap within which it would operate, it should have presented this information at the hearings. At a minimum, VGS should explain in its memorandum why VGS believes the MOU information is important now, but was not important at the time of the hearings.

2. Information Irrelevant

In the alternative, if the Board accepts the MOU without a memorandum, the Board should determine that on its substance, it is not helpful as it does not have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." V.R.E. 401.

By the terms of the MOU it is not to be approved by the Board. (MOU at 3). Also, by the terms of the MOU, it relates only to the PSD and VGS, who both reserve the right to advocate different positions in future proceedings. (MOU at 3). It is merely an agreement between two parties. Both of these parties already oppose the Board re-examining the CPG approval in light of the new cost information. There is nothing in the terms of the MOU that makes it binding or enforceable going forward except by the DPS and VGS. In fact, a day after the Board issues an order, the two parties could abandon or re-negotiate the MOU and completely eviscerate even the claimed, though illusory, benefits that VGS and PSD suggest the MOU has.

Additionally, by the terms of the MOU, there are numerous exceptions to the proposed cost cap. (MOU at 2, para. 2). In light of these, the Board cannot rely on the MOU providing any helpful evidence about its impact on rates. Based on the terms of the MOU, the Board cannot determine that it is more likely than not that it will have the claimed effect of capping costs or

affecting in any way the overall costs or benefits of the total project. By its terms, the MOU is not likely to affect any fact of consequence and is not relevant. If admitted, the MOU fails to present credible evidence that the Board can rely on to evaluate whether to re-open the proceeding and re-examine whether a CPG should be awarded for this project.

Finally, the MOU fails to address which customers would be affected by the cost increase or the cost cap. The impact on the large industrial users compared to the residential users should be evaluated in determining whether the claimed cost cap provides any actual benefits that justify the Board not re-opening the CPG proceeding.

3. Process if MOU is Admitted

If the Board admits the MOU, it should require VGS to submit evidence in support of the MOU with analysis that supports any claimed impact of the MOU on a matter at issue in this proceeding. The Board should allow parties an opportunity for discovery and an opportunity to respond to the evidence presented.

If the Board admits the MOU, the Board should also require that the MOU be approved by the Board. The Board should not accept a delay in the proceedings and additional process, including an additional burden on other parties, without an assurance that the MOU will have some impact going forward. The Board should also appoint an independent counsel to represent the public, as allowed by 30 V.S.A. sec. 217, to provide an independent evaluation of the MOU and its impacts.


Conclusion

For the foregoing reasons, the Board should refuse to admit the MOU until a motion accompanied by a memorandum has been submitted, as required by PSB Rules. In the alternative, the Board should determine that the MOU on its face fails to provide helpful

information for the Board to make a decision on whether to re-open the proceedings to determine if a CPG should be granted for the project. If the Board admits the MOU, the process going forward (1) should require evidence in support of it and provide an opportunity for parties to respond; (2) should require Board approval of the MOU; and (3) should include independent counsel to evaluate the MOU.

Dated at Montpelier, Vermont, this 27th day of October 2015.

CONSERVATION LAW FOUNDATION

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